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JUN 18 2004

OFFICE OF PETITIONS

In re Application of
Barri & Martin
Application No. 10/660,344
Filed: September 10, 2003
Attorney Docket No.: MAT 3H5
For: BREATH-SENSITIVE TOY

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is a decision on the petition under 37 CFR 1.47(a), filed May 5, 2004 (certificate of mailing date May 3, 2004).

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

The above-identified application was filed on September 10, 2003 without an executed oath or declaration. Accordingly, on December 2, 2003, a "Notice to File Missing Parts of Nonprovisional Application" (Notice) was mailed, requiring an executed oath or declaration and a surcharge for its late filing

In response, on May 5, 2004 (certificate of mailing date May 3, 2004), a petition for a three month extension of time and required fee, a declaration executed by 1 of 2 joint inventors, the surcharge, the petition fee, and the instant petition were filed.

A grantable petition under 37 CFR 1.47(a) requires

- (1) a petition including proof of the pertinent facts establishing that the joint inventor(s) refuses to join, or cannot be found or reached after diligent effort,
- (2) a proper oath or Declaration executed by the available joint inventor(s),
- (3) the fee of \$130 as specified in 37 CFR § 1.17(h), and
- (4) the last known address of the omitted inventor(s).

This petition lacks item (1) above.

As to item (1), Applicant has failed to establish that the inventor has properly refused to sign the declaration. The proof of the pertinent events should be made by a statement of someone with first hand knowledge of the events. The Office requires that the non-signing inventor be provided with a complete copy of the application as filed. This includes the specification with claims, drawings, if any, and a declaration. See MPEP 409.03(d).

The petition and accompanying exhibit establish that Mr. Martin was presented with signature papers. They do not establish that Mr. Martin was presented with the application papers.

Mr. Martin must have the complete application in his possession in order to make an informed decision as to whether he joins in its filing. When petitioner can show that Mr. Martin was mailed or received the complete application and that he either refused to sign the declaration or would not respond to the request that he sign the declaration, petitioner will have satisfied this requirement.

Mr. Martin cannot make the necessary statements found in the declaration-- i.e. "I have reviewed and understand..." -- without having examined the patent application. Mr. Martin's signature on the declaration would obligate him, under penalty of "fine or imprisonment, or both" to particulars to which Mr. Martin can only attest after having had the opportunity to review the subject patent application.

Petitioner must send Mr. Martin a copy of the as filed above-identified application and request that he sign the declaration.

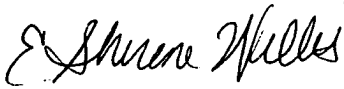
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